

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

JAMES TOLEDANO,
Plaintiff

v.

PRISCILLA MARCONI, et al.,
Defendants.

Case No. SACV 22-1331-MWF (BFM)

**ORDER ACCEPTING REPORT
AND RECOMMENDATION OF
UNITED STATES MAGISTRATE
JUDGE**

Pursuant to 28 U.S.C. § 636, the Court has reviewed the First Amended Complaint, Defendants' Motions to Dismiss the First Amended Complaint ("Motions," Docket Nos. 59, 62), Plaintiff's Oppositions to the Motions (Docket Nos. 64, 65), the Report and Recommendation of the United States Magistrate Judge recommending granting the Motions in part ("Report," Docket No. 73), the Objections of the Parties (Docket Nos. 75, 76), the Replies/Responses to the Objections filed by the parties (Docket Nos. 77-79), and other relevant records on file.

Although not required, the Court briefly makes the following observations. *See United States v. Ramos*, 65 F.4th 427, 434 (9th Cir. 2023) ("the district court ha[s] no obligation to provide individualized analysis of each objection"); *Wang v. Masaitis*, 416 F.3d 992, 1000 (9th Cir. 2005) (affirming a cursory district court order

1 summarily adopting, without addressing any objections, a magistrate judge's report
2 and recommendation). Plaintiff's Objections largely rehash facts and arguments
3 already presented in previous filings and considered by the detailed Report. (*See*,
4 *e.g.*, Docket Nos. 28, 45, 64, 65, 76, 77). This of course begs the question of
5 whether Plaintiff should be allowed leave to amend, the main point Defendants press
6 in their Objections. (*See* Docket No. 75 at 2-4). As noted in this Court's previous
7 order accepting the first Report and Recommendation prepared by a different
8 Magistrate Judge, "Defendants' objections amount to this: Don't grant leave to
9 amend because we're sick of dealing with this Plaintiff." (Docket No. 50 at 2). The
10 Court also previously indicated that "[p]erhaps futility of amendment could be
11 shown after the next round of briefing" (*id.*) — which is this round currently before
12 the Court.

13 While the Court understands Defendants' frustration in the action proceeding
14 forward with a Second Amended Complaint as recommended by the Report, the
15 Magistrate Judge did not take the futility-of-amendment assessment lightly. Indeed,
16 she specifically declined to recommend dismissal with leave to amend Plaintiff's
17 malicious-prosecution claim. (Docket No. 50 at 2, 12-17, 27-28). Moreover, the
18 Report analyzed and provided adequate reasons to allow Plaintiff another
19 opportunity, likely his last, to cure deficiencies in his fabrication-of-evidence claim
20 and related conspiracy-to-fabricate-evidence claim. (*Id.* at 2, 17-28). While there
21 may be valid reasons Plaintiff should not be treated as an ordinary pro se plaintiff as
22 Defendants contend (Docket No. 75 at 3), only one prior amendment has been
23 afforded so far. *See Foman v. Davis*, 371 U.S. 178, 182 (1962) (in absence of any
24 apparent or declared reason — such as "repeated failure to cure deficiencies by
25 amendments previously allowed" — leave to amend should be freely given);
26 *Sonoma Cnty. Ass'n of Retired Emps. v. Sonoma Cnty*, 708 F.3d 1109, 1117 (9th Cir.
27 2013). Accordingly, because the Report adequately considered whether leave to
28 amend should be granted, and because the recommendation is for only a second

1 amendment to one claim and its related conspiracy claim, the Court accepts the
2 disposition recommended by the Report.

3 The Objections of both parties are overruled.

4 **IT IS THEREFORE ORDERED** that:

5 (1) The Report is **ACCEPTED** and adopted as the Court's own findings and
6 conclusions;


7 (2) Defendants' Motions (Docket Nos 59, 62) are **GRANTED IN PART**;

8 (3) Plaintiff's malicious-prosecution claim is **DISMISSED** without leave to
9 amend;

10 (4) Plaintiff's claim of fabrication of evidence and related claim of conspiracy
11 to fabricate evidence are **DISMISSED** with leave to amend; AND

12 (5) If Plaintiff chooses to continue with this action, he shall file a Second
13 Amended Complaint no later than **APRIL 29, 2024**.

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15 Dated: March 27, 2024

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17 MICHAEL W. FITZGERALD
18 United States District Judge
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